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4 Attorneys for STATE OF ARIZONA

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

6 **IN AND FOR THE COUNTY OF YAVAPAI**

7 STATE OF ARIZONA,

8 Plaintiff,

9 vs.

10 JAMES ARTHUR RAY,

11 Defendant.

V1300CR201080049

**NOTICE OF SUBMISSION OF
PARTIAL TRANSCRIPT OF
DR. DICKSON'S TESTIMONY
RE: ADVICE IN PREPARING
FOR HEAT EVENT**

(The Honorable Warren Darrow)

12
13 Comes now the State of Arizona, through undersigned counsel, and respectfully submits
14 the partial transcript of Dr. Dickson's trial testimony relating to the advice he would give to
15 someone preparing for exposure to "enclosed, extreme heat environment for over two hours." A
16 transcript of this testimony is attached as Exhibit A. During oral argument on Defendant's Rule
17 20 motion, this Court indicated its belief that the State had misstated this testimony. The State
18 therefore respectfully submits this transcript.
19

20 RESPECTFULLY submitted this 8th day of June, 2011.

21
22
23 By

Sheila Sullivan Polk
24 SHEILA SULLIVAN POLK
25 YAVAPAI COUNTY ATTORNEY
26

FILED
4:10 O'Clock P.M.

JUN 08 2011 ✓

SANDRA K. MARKHAM, Clerk

By Stephanie Kling

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COPIES of the foregoing delivered
this 8th day of June, 2011:

Hon. Warren Darrow
Judge of the Superior Court

Thomas Kelly

Truc Do
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

By: Kathy Durrer

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY FORTY-FOUR

MAY 11, 2011

Camp Verde, Arizona

(Partial transcript -- testimony of Matthew Dickson
and proceeding held outside presence of jury.)

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

03:48:39PM 1 Part of his report talked about recommending the
03:48:42PM 2 EMS people be there. It goes to something that
03:48:44PM 3 Mr. Ray could have done. This is referring, again,
03:48:47PM 4 to actions by participants. Again, it's from a
03:48:51PM 5 physician's standpoint, actions by a participants.

03:48:54PM 6 And we've already heard participants have
03:48:56PM 7 done "A," "B," and "C," and other people did "X,"
03:48:59PM 8 "Y," and "Z." I think it's directly relevant to
03:49:02PM 9 assessing what the effects were doing those. It
03:49:05PM 10 goes right to causation.

03:49:19PM 11 THE COURT: Because -- with it being on a
03:49:50PM 12 physician's perspective, I'm going to ask the
03:49:52PM 13 question.

03:49:52PM 14 MR. HUGHES: Thank you, Your Honor.

03:50:07PM 15 (End of sidebar conference.)

03:50:07PM 16 THE COURT: Doctor, I'll ask the questions.
03:50:09PM 17 The attorneys may wish to follow up.

03:50:13PM 18 From a physician's perspective, what
03:50:15PM 19 survival advice would you give a patient of yours
03:50:18PM 20 to help prepare her for a forthcoming event in
03:50:21PM 21 which she will be exposed to an enclosed, extreme
03:50:25PM 22 heat environment for over two hours?

03:50:30PM 23 Do you want me to reread it?

03:50:33PM 24 THE WITNESS: Yeah. Read it one more time,
03:50:33PM 25 please.

03:50:35PM 1 THE COURT: From a physician's perspective,
03:50:37PM 2 what survival advice would you give a patient of
03:50:40PM 3 yours to help prepare her for a forthcoming event
03:50:43PM 4 in which she will be exposed to an enclosed,
03:50:46PM 5 extreme heat environment for over two hours?

03:50:56PM 6 THE WITNESS: So if a patient came to me, as
03:50:59PM 7 their doctor -- that's what I'm getting -- and
03:51:02PM 8 asked that they were going to be exposed to a heat
03:51:05PM 9 environment for two hours, and what would be my
03:51:11PM 10 advice?

03:51:11PM 11 I'm just rewording that. Does that
03:51:12PM 12 sounding --

03:51:13PM 13 THE COURT: I really --

03:51:14PM 14 THE WITNESS: You can't. Okay.

03:51:15PM 15 THE COURT: I can read the question.

03:51:16PM 16 THE WITNESS: Sorry. Okay.

03:51:17PM 17 THE COURT: From a physician's perspective --

03:51:17PM 18 THE WITNESS: Okay.

03:51:20PM 19 THE COURT: -- what survival advice would you
03:51:21PM 20 give a patient of yours to help prepare her for a
03:51:24PM 21 forthcoming event in which she will be exposed to
03:51:27PM 22 an enclosed, extreme heat environment for over two
03:51:31PM 23 hours?

03:51:32PM 24 If you can answer that.

03:51:33PM 25 THE WITNESS: I can. There's several things

03:51:35PM 1 that somebody can do, and this is what we recommend
03:51:38PM 2 to our people that are going to be exposed to hot
03:51:41PM 3 environments.

03:51:41PM 4 One is time to acclimate. It takes a
03:51:45PM 5 couple weeks. We have patient -- people that move
03:51:47PM 6 here, especially the Marine Corps. You get these
03:51:51PM 7 new recruits in in the middle of July, and they
03:51:53PM 8 haven't had time to acclimate. So time to
03:51:56PM 9 acclimate can help you survive better.

03:51:59PM 10 Another thing you can do is keep well
03:52:01PM 11 hydrated. The -- we talked a little bit -- this is
03:52:06PM 12 physiologic response to -- to this heat is your --
03:52:11PM 13 your arteries and veins dilate, and your heart's
03:52:14PM 14 got to pump a lot. And if you don't have the fluid
03:52:18PM 15 in there, your heart's got to pump a lot more. So
03:52:21PM 16 keeping well hydrated ahead of time would be an
03:52:23PM 17 important thing.

03:52:24PM 18 And then -- this is part of my lecture
03:52:28PM 19 that I give -- is if you are going to be exposed to
03:52:32PM 20 heat, you need to hydrate continuously to keep up,
03:52:36PM 21 especially if you're working out or being exposed
03:52:39PM 22 for several hours. Something that if you
03:52:41PM 23 continuously drink fluids, that would at least help
03:52:45PM 24 some -- help alleviate some of the problems.

03:52:49PM 25 And ultimately if I had a patient that

03:52:54PM 1 said they were going to be in a hot environment for
03:52:56PM 2 two hours, I would recommend that they -- I would
03:52:57PM 3 educate them on the signs and symptoms. When they
03:53:00PM 4 have just little signs and symptoms -- nausea,
03:53:04PM 5 cramping, malaise -- get out, cool off before you
03:53:09PM 6 start going into the problems of heat stroke.

03:53:13PM 7 And that's where the problem can arise is
03:53:16PM 8 once you get to that level of heat stroke, you
03:53:20PM 9 might not recognize that you're getting worse
03:53:23PM 10 because you've got that change in mental status.

03:53:26PM 11 So I think those would be the things that
03:53:28PM 12 I would recommend to a patient if they were going
03:53:31PM 13 to do that.

03:53:31PM 14 THE COURT: Follow up, Mr. Hughes?

03:53:36PM 15 MR. HUGHES: Thank you.

03:53:36PM 16 FURTHER REDIRECT EXAMINATION

03:53:36PM 17 BY MR. HUGHES:

03:53:37PM 18 Q. Doctor, would you recommend that they
03:53:39PM 19 fast for a period of, say, 36 hours before they go
03:53:41PM 20 into that environment?

03:53:42PM 21 A. I would not.

03:53:43PM 22 Q. Why is that?

03:53:44PM 23 A. Well, I mean, that's going to make you
03:53:45PM 24 weaker. Anything you're going to do that's
03:53:48PM 25 strenuous, whether it's being in an enclosed, hot

03:53:52PM 1 area for a long period of time or exercising,
03:53:55PM 2 being -- being at your top physical condition is
03:53:58PM 3 going to do you the best in that stressful time.

03:54:01PM 4 Q. How about sleep? Would you recommend
03:54:03PM 5 they get a lot of sleep or very little sleep?

03:54:05PM 6 A. Absolutely lots of sleep. Again,
03:54:07PM 7 whenever you're going to do a stressful activity,
03:54:10PM 8 you want to be at your best.

03:54:11PM 9 Q. I think you had mentioned earlier in
03:54:13PM 10 testimony you advised firefighters and paramedics
03:54:17PM 11 to keep an eye on each other when they're out --
03:54:20PM 12 down in Yuma working. Would you give similar
03:54:23PM 13 advice to people going into this environment?

03:54:24PM 14 A. Absolutely.

03:54:26PM 15 MR. HUGHES: Thank you.

03:54:26PM 16 I have no further questions.

03:54:27PM 17 THE COURT: Ms. Do?

03:54:28PM 18 MS. DO: Thank you.

03:54:28PM 19 RECROSS-EXAMINATION

03:54:28PM 20 BY MS. DO:

03:54:29PM 21 Q. Good afternoon again, Doctor.

03:54:31PM 22 A. Hello.

03:54:31PM 23 Q. So you would give the following advice as
03:54:33PM 24 a doctor: You would tell the person to hydrate,
03:54:37PM 25 hydrate, hydrate; right?

03:54:39PM 1 A. I would recommend hydrating. Yes.

03:54:43PM 2 Q. Okay. And so if you had an event that
03:54:44PM 3 was going to be the end of a five-day retreat, you
03:54:47PM 4 would tell the person to hydrate, hydrate, hydrate,
03:54:50PM 5 from the very beginning of the event?

03:54:51PM 6 A. Correct.

03:54:53PM 7 MR. HUGHES: Object to foundation as to --
03:54:55PM 8 hydrate during the sweat lodge or before the sweat
03:54:59PM 9 lodge?

03:54:59PM 10 THE COURT: Okay. As to foundation.

03:55:02PM 11 MS. DO: Sure. I'll clear it up.

03:55:03PM 12 Q. I understood, Doctor, in answering this
03:55:06PM 13 question you said that it was important to be well
03:55:09PM 14 hydrated continuously?

03:55:10PM 15 A. Correct.

03:55:10PM 16 Q. So assuming you had a five-day event
03:55:13PM 17 where the two-hour heated environment occurred at
03:55:17PM 18 the very end of those five days. You would begin
03:55:19PM 19 at the very -- at day one telling people to
03:55:23PM 20 hydrate, hydrate, hydrate?

03:55:25PM 21 A. Correct.

03:55:25PM 22 Q. You would also tell them to get out if
03:55:27PM 23 they needed to; right?

03:55:29PM 24 A. Correct.

03:55:29PM 25 Q. So you would tell them if you have to

03:55:31PM 1 leave, then leave?

03:55:33PM 2 A. That would be part of it.

03:55:34PM 3 Q. Right. And get out and -- and cool off

03:55:38PM 4 if you need to; correct?

03:55:39PM 5 A. Correct.

03:55:40PM 6 Q. And so if there were electrolytes and

03:55:42PM 7 fruits made available, you would advise the person

03:55:44PM 8 if you need to leave, then leave, go out and cool

03:55:47PM 9 off, drink if you need to; right?

03:55:49PM 10 A. Absolutely.

03:55:49PM 11 Q. And since Mr. Hughes asked you, Liz

03:55:54PM 12 Neuman, one of the decedents that you reviewed her

03:55:57PM 13 case for -- you understood that she did not fast;

03:55:57PM 14 correct?

03:56:01PM 15 A. It's possible.

03:56:02PM 16 Q. Do you know that?

03:56:03PM 17 A. I've read it, but it could be --

03:56:03PM 18 Q. Okay.

03:56:05PM 19 A. I'll have to take your word for it.

03:56:07PM 20 Q. Thank you.

03:56:07PM 21 No reason to dispute that she did not

03:56:11PM 22 fast; right?

03:56:11PM 23 A. No.

03:56:11PM 24 Q. And if the juror heard -- if the jury

03:56:12PM 25 heard testimony that she also slept before the

03:56:15PM 1 actual two-hour event, you would also consider
03:56:17PM 2 that; correct?

03:56:18PM 3 A. Yes. Definitely.

03:56:20PM 4 MS. DO: Thank you very much, Doctor.

03:56:22PM 5 THE WITNESS: Thank you.

03:56:23PM 6 THE COURT: Thank you.

03:56:25PM 7 Dr. Dickson, you'll be excused as a
03:56:27PM 8 witness at this time temporarily. You'll be
03:56:30PM 9 technically subject to recall. So that rule of
03:56:35PM 10 exclusion of witnesses will continue to apply. So
03:56:37PM 11 this isn't the time to talk to -- to other
03:56:40PM 12 witnesses in the case that are medical people.
03:56:43PM 13 There's been some talk about that during
03:56:45PM 14 examination.

03:56:46PM 15 But -- but a number of witnesses in this
03:56:48PM 16 case are subject to possible recall. So it's very
03:56:51PM 17 important you continue to follow that rule of
03:56:53PM 18 exclusion, not communicate -- not communicate with
03:56:56PM 19 any other witness until the case is completely
03:56:59PM 20 over, the trial is over.

03:57:00PM 21 Do you understand that?

03:57:01PM 22 THE WITNESS: Yes, sir.

03:57:03PM 23 THE COURT: You can talk to the lawyers,
03:57:04PM 24 however. You understand that, as well?

03:57:05PM 25 THE WITNESS: Yes, sir.